THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No.22169 of 2000

Date: 12.10.2007

Between:

1. Jagdish Prasad and others

……PETITIONER(S)

A N D

1. Police Station, Sultan Bazar, Hyderabad, represented by Inspector and others

……RESPONDENT(S)

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No.22169 of 2000

ORDER:

Second respondent, represented by her husband the third respondent, filed a private complaint against the petitioners and others before the 4th Metropolitan Magistrate, Hyderabad, for offences under Sections 177, 193, 260, 406, 419, 420, 463, 464, 468 & 471 of IPC read with Section 34 IPC, and under Sections 9 and 12 of Notaries Act, 1952. The learned Magistrate referred the said complaint to police for investigation under Section 156(3) Cr.P.C. whereupon the first respondent registered it as Crime No.256 of 2000. The petitioners, who are shown as accused Nos.2, 3, 6 and 5 respectively in the complaint, filed this petition to quash the said FIR against them.

2. The main contention of the learned counsel for petitioners is that inasmuch as the grievance of the complainant i.e. the second respondent, relates to forgery of the General Power of Attorney given by her to her husband notarized by Laxman Rao Karchalkar, father of the person shown as A-1 in the complaint, basing on which O.S.No.979 of 1987 on the file of the VII Junior Civil Judge, Hyderabad, was filed for removal of the alleged unauthorized constructions, where the general power of attorney was produced, and as the second petitioner who gave evidence in that suit had admitted her executing the general power of attorney in favour of her husband (the first petitioner), no question of forging the general power of attorney by the first petitioner arises,

and inasmuch as the application filed by the second respondent to send the general power of attorney to an expert for opinion was allowed, but was set aside with some observations in a revision preferred to this Court, and as the trial Court had, after trial, dismissed the suit and as the appeal preferred against that decree was also dismissed and the second appeal against that judgment is pending in this Court and inasmuch as the civil Court already gave a finding that the general power of attorney relied on is a genuine document, the FIR is liable to be quashed, as the complaint is given only to harass the petitioners.

3. The contention of the learned counsel for respondents 2 and 3 is that inasmuch as the general power of attorney was brought into existence with the connivance of Vilas Karchalkar, who is shown as A-1 in the complaint, by making use of the Memorial and the rubber Stamp belonging to Laxman Rao Karchalkar, the father of A-1, an investigation has to be made to find out if A-1 forged the signatures of his father in connivance with the petitioners or not and inasmuch as the apex Court in **M.NARAYANDAS v. STATE OF KARNATAKA**[1] held that High Court, while considering a petition for quashing an FIR, cannot inquire into the genuineness or otherwise of the allegations made in the FIR, and even the fact that the case to be investigated falls under Section 195 Cr.P.C. by itself is not a ground for quashing of the FIR; and as a Constitution Bench of the Apex Court in **IQBAL SINGH MARWAH v. MEENAKSHI MARWAH**[2] held that in cases where forgery of a document is committed prior to the said document being produced, or given in evidence in a Court, the procedure contemplated by Section 195 Cr.P.C. need not be followed and a private complaint for forgery is maintainable, and since it is the specific case of respondents 2 and 3 that forgery of the general power of attorney was committed prior to its being

produced into Court, Section 195 Cr.P.C. does not apply to the facts of this case, and contended that in any event since the petitioners have a more effective alternative remedy of filing a petition under Section 482 Cr.P.C. this writ petition is not maintainable by relying on **KILLAPARTHI SURI APPA RAO v. SUB-INSPECTOR OF POLICE, DEVARAPALLI P.S.**[3].

4. As the apex Court in para-5 of **M.NARAYANDAS** case (1 supra), relied on by the learned counsel for respondents, held-

> "……It is also settled law that the court would not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR. The court also cannot inquire whether the allegations in the complaint are likely to be established or not."

and as para-12 of the FIR reads-

> "……A-1 has signed by impersonating as Late Laxman Rao Kerchalkar and A-2 has signed for Smt. Shakuntala Bai (A-3) and A-4 and A-5 have attested documents and her brother i.e. A-6 has supported illegal acts of A-2 and for that they are liable to be punished under Sections 419, 420 and 463 of IPC. ……"

and inasmuch as the question whether A-1 forged the signatures of his father Laxman Rao Karchalkar in connivance with the petitioners and made use of the rubber stamp and Memorial of his father or not has to be investigated into by the police, and as this court while considering a petition for quashing the FIR has to presume that the averments in the FIR are true and cannot make an enquiry whether the allegations can be proved by the complainant or not, and as the police, after investigation, would file a charge sheet or refer the case as false, if the allegations in the complainant are found to be untrue, I find no grounds to quash the FIR.

5. Hence, the petition is dismissed. No order as to costs.

12.10.2007

Cvrk

_

---

[1] (2003) 11 SCC 251

[2] (2005) 4 SCC 370

[3] 2004 (1) ALT 301